IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9434 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVAL HARDASBHAI MELUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9434 of 2004

MR NV SOLANKI for Petitioner No. 1-561

MR KAMAL TRIVEDI, ADDL.ADVOCATE GENERAL WITH

MS SANGEETA VISHEN, AGP for Respondent No. 1-2

MR JITENDRA MALKAN for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. Raval Hardasbhai Melubhai and 560 others, petitioners, have filed this petition with a prayer that

this Court may issue a writ of mandamus and also direction inter alia declaring the action of termination of the services of the petitioners herein at a stretch by an oral order simplicitor as illegal, arbitrary, unjust and violative of Articles 14 and 21 of the Constitution of India and direct the respondents herein i.e. respondent No.1 - State of Gujarat, through the Commandant General Home Guards, Headquarters, Ahmedabad, respondent No. 2 - the Commandant of Battalion -1, Border Wing Home Guards (for short "BWHG"), Palanpur, Dist.Banaskantha to reinstate all such petitioners in service with all the legal rights accrued in their favour so far and with all consequential benefits to which they have been legally entitled to. The petitioners further prayed that the petitioners may be treated as permanent and full-time members of the Border Wing Home Guards and they be treated at par with all such full time and permanent employees of the BWHG devoid of any kind of differential treatment in respect of conditions of service and payment of all the allowable consequential benefits and other reliefs in this behalf.

2. When the petition was placed for hearing before this Court, my learned Sister Madam R.M.Doshit, J. by her order dated 3.8.2004 stated that the petition involving identical issues are admitted and are pending for final hearing and therefore it was admitted and directed to be heard with Special Civil Application No.15654 of 2003. The said order was passed on 3.8.2004.

3. It may be noted that this matter was also placed before this Court somewhere in December, 2004, along with Special Civil Application No.10862 of 2003. As there are group of matters, this Court with a view to see that there may not be any complication of fact in deciding the matter, decided only one matter i.e. Special Civil Application No.10862 of 2003 in the case of Gajaji Gopalji Jadeja and others Vs. State of Gujarat. The said matter was argued by learned Senior Advocate Mr.Girish Patel with Mr.Shalin Mehta, learned advocate on behalf of the petitioner. On behalf of respondent State of Gujarat Mr.Kamal Trivedi, learned Additional Advocate General with Ms.Sangeeta Vishen, learned AGP appeared and Mr.Jitendra Malkan, the then learned Senior Standing Counsel appeared on behalf of Union of India at the relevant time.

4. When the matter was finally heard and hearing was completed, Mr.N.V.Solanki, learned advocate requested this Court to hear this matter. However, at that time the Court indicated that let the judgment of one matter

will be pronounced and thereafter the said matter will be taken up for hearing.

5. In the aforesaid matter i.e. Special Civil Application No.10862 of 2003, this Court has pronounced the judgment on 9.2.2005, and thereafter again this matter was placed before this Court, and on that day due to change in roster the Court has not taken up the said matter, but at that time, Mr.Solanki, learned advocate for the petitioners assures that he will file necessary note and will obtain the order of the Hon'ble Chief Justice. Thereafter Mr.Solanki, learned advocate for the petitioners has filed a note before the registry to place this matter before this Court and ultimately as per the order of the learned Chief Justice, the matter has been placed before this Court. That is how this matter is taken up for hearing today.

6. Heard Mr.Solanki, learned advocate for the petitioners, Mr.Kamal Trivedi, learned Additional Advocate General with Ms.Sangeeta Vishen, learned AGP for the respondents No.1 and 2 and Mr.Jitendra Malkan, learned Senior Standing Counsel for the Union of India respondent No.3.

7. Mr.Solanki, learned advocate for the petitioners has stated that the facts of the present petitioners and the facts of the petitioners in Special Civil Application No.10862 of 2003 are almost identical, and in fact the Government has also filed affidavit in this behalf. Even in the affidavit-in-reply on behalf of the respondent, in para 5 the respondent has admitted that the issues involved in the said petition are almost identical to that of petition filed by Gajaji Gopalji Jadeja and others Vs. State of Gujarat in Special Civil Application No.10862 of 2003, and even the respondent has relied upon the affidavit filed by them in that matter and this matter also the respondent indicated that other Special Civil Applications No.15654 of 2003, 9434 of 2004 and one page petitions i.e. SCA No.17171 of 2003 to 17281 of 2003 are also the same.

8. In view of the same, I issue the following directions:

8.1 There existed master and servant relationship of the petitioners with the State Government. The petitioners are entitled to the same benefit as admissible to the permanent Border Wing Home Guards. Both the State Government and the Central Government are responsible for salary and other emoluments/allowances

payable to the petitioners which the Central and State Governments had undertaken as per the provisions of the scheme issued on 27.6.1979 by Union Government.

8.2 I further direct that the petitioners will be given all benefits admissible to the State Government's servants including fixation of pay, benefit of Provident Fund, Gratuity, retiring benefits, leave privileges, all admissible Government allowances and increments as given to the Government employees under the Rules.

8.3 The petitioners will be given the arrears of service benefits and fixation of pay scale from 29.7.2004 the date on which the petition has been filed.

8.4 The respondents are further directed to absorb the Part Time personnels of BWHGs retrospectively i.e. from 30.7.2003 and the age bar, if any, stands hereby waived.

8.5 As the judgement is delivered on the basic principles of justice and equality as enshrined in the Constitution of India, the Secretaries of Home Department and Finance Department, both of the State of Gujarat as well as Union of India are directed to implement this order/judgement within four months from date of receipt of the writ.

8.6 It may be noted that the above directions will be applicable only to 561 present petitioners + two other petitioners who are joined in this petition and it will not be applicable to any other persons.

9. The petition is allowed to the above extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.M. Mehta, J.)

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